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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

CHRISTOPHER DIAZ,

Defendant and Appellant.

2d Crim. No. B266973  
(Super. Ct. No. 2013006994)  
(Ventura County)

Christopher Diaz appeals from judgment after an order revoking his postrelease community supervision (PRCS). (Pen. Code, § 3450 et seq.)<sup>1</sup> He contends the revocation procedures employed by Ventura County violated his right to due process because he did not have a *Morrissey*-compliant<sup>2</sup> probable cause hearing before the court within 15 days of arrest. He seeks an order reversing the trial court's denial of his motion to dismiss. We affirm.

**FACTUAL BACKGROUND**

In 2013, Diaz was convicted after plea of guilty to stalking (§ 646.9, subd. (a)). The trial court granted formal probation. After he admitted violating probation, he was sentenced to prison in 2014.

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<sup>1</sup> All statutory references are to the Penal Code unless otherwise stated.

<sup>2</sup> *Morrissey v. Brewer* (1972) 408 U.S. 471 (*Morrissey*).

Diaz was released in 2014 on PRCS following realignment. The Ventura County Probation Agency is his supervising agency. As a condition of release, he agreed to obey all laws, to report to probation as directed, to not use drugs or controlled substances, and to submit to drug testing. He also agreed the probation agency could, without a court hearing, order “flash incarceration” in a county jail for up to 10 days if he violated the conditions of his release. (§ 3453, subd. (q).)

In June 2015,<sup>3</sup> Diaz was released from jail after serving time for a PRCS violation. He did not report to probation or for drug testing after being released from jail. In July, he was arrested for possession of drugs and admitted using heroin that day. These acts collectively resulted in revocation proceedings for his third violation of PRCS in eight months.

Diaz was taken into custody on July 3. On July 6, Diaz appeared in court with counsel. The next day, Senior Deputy Probation Officer Venessa Meza met with Diaz. Meza conducted an administrative probable cause hearing, and concluded there was probable cause to believe that Diaz violated the terms of PRCS. She advised Diaz of his right to be represented by an attorney. He requested a formal revocation hearing.

On July 13, the probation agency filed a revocation petition. The hearing was set for July 23.

On July 20, Diaz moved (through counsel) to dismiss the petition for revocation and for release based upon an alleged violation of due process. He argued he was entitled to arraignment before a court within 10 days of arrest and a probable cause hearing before a court within 15 days of arrest.

The trial court denied Diaz’s motion to dismiss and heard the revocation petition. Diaz submitted on the probation officer’s report. The trial court found him in violation of PRCS and ordered him to serve a jail sentence.

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<sup>3</sup> All future dates are in the year 2015.

## DISCUSSION

### *Due Process Requirements*

Revocation of supervised release deprives a person of a conditional liberty interest, and may only be had with due process protections. (*Morrissey, supra*, 408 U.S. at p. 482 [parole revocation]; *People v. Vickers* (1972) 8 Cal.3d 451, 458 (*Vickers*) [probation revocation].)

To conform to due process, revocation of conditional release requires a two-step process: (1) an initial determination of probable cause to justify temporary detention; and (2) a formal revocation hearing to determine whether the facts warrant revocation. (*Morrissey, supra*, 408 U.S. at p. 485; *Vickers, supra*, 8 Cal.3d at p. 456.) It is undisputed that the formal revocation hearing complied with *Morrissey* and *Vickers* in this case.

### *The Probable Cause Hearing*

The probable cause determination is a “minimal inquiry,” made near the place of arrest “as promptly as convenient after arrest.” (*Morrissey, supra*, 408 U.S. at p. 485.) It need not be made by a judicial officer; it may be made by any qualified person “not directly involved in the case.” (*Id.* at pp. 485-486 [probable cause determination for parole revocation may be made by a parole officer other than the officer who reports the violation or recommends revocation]; *Vickers, supra*, 8 Cal.3d at pp. 456-457.) To conform to due process, the probable cause determination must be preceded by notice of the hearing and the alleged violations, and must provide an opportunity for the supervised person to speak on his own behalf, present evidence, and question adverse witnesses. (*Morrissey*, at pp. 485-486; *Vickers*, at pp. 456-457.) The officer who determines probable cause must summarize what occurs at the hearing, but need not make formal findings of fact and law. (*Morrissey*, at p. 487; *Vickers*, at p. 457.)

Diaz complains that the probable cause hearing conducted by Meza was “nothing more than a pro forma, ex-parte interview” which was “in effect, an early disposition conference rather than a fact-finding hearing.” But these arguments advanced on appeal were not made to the trial court. Arguments not raised below are forfeited.

(*People v. Hartshorn* (2012) 202 Cal.App.4th 1145, 1151.) And, in any event, we decline to exercise our discretion to review forfeited issues because, as explained below, Diaz has failed to demonstrate prejudice in view of the court's findings at the formal revocation hearing. For the same reasons, we do not address Diaz's arguments regarding the effect of Proposition 9, the Victims' Bill of Rights Act of 2008: Marsy's Law.

*Diaz Has Failed to Demonstrate Prejudice*

Diaz argues that his due process rights were violated at the probable cause phase, prior to the formal revocation hearing. But the underlying problem with his appeal is this: No matter what due process violation is claimed, he makes no showing of prejudice at the formal revocation hearing. He submitted at the revocation hearing and has now served his sentence.

The denial of a *Morrissey*-compliant probable cause hearing does not warrant reversal unless the violation results in prejudice at the revocation hearing. (*In re La Croix* (1974) 12 Cal.3d 146, 154-155.) But Diaz makes no showing that any due process defect prejudiced him or affected the outcome of the PRCS revocation hearing. (*In re Winn* (1975) 13 Cal.3d 694, 698 [defendant has burden of showing prejudice]; *In re Moore* (1975) 45 Cal.App.3d 285, 294.) Because he was found in violation and has served the custodial sanction "there is nothing for us to remedy, even if we were disposed to do so." (*Spencer v. Kemna* (1998) 523 U.S. 1, 18.)

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED.

TANGEMAN, J.

We concur:

GILBERT, P. J.

YEGAN, J.

Bruce A. Young, Judge

Superior Court County of Ventura

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Wayne C. Tobin, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Shawn McGahey Webb, Supervising Deputy Attorney General, and Nathan Guttman, Deputy Attorney General, for Plaintiff and Respondent.